Supreme Court, U.S.
FILED
MAR 5 2002
CLERK

(2)

No. 01-1131

In the Supreme Court of the United States

LEONIDA LIDMAN,

Petitioner,

v.

BRENDA J. SMITH, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

RESPONDENT HOUSING AUTHORITY OF THE CITY OF NEWARK BRIEF IN OPPOSITION TO LEONIDA LIDMAN'S PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the United States Court of Appeals, 3rd Circuit erred in denying Petitioners appeal to reinstate Petitioner's case under F.R.C.P. 60 (b)(6)?

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RESPONDENT, HOUSING AUTHORITY OF THE CITY OF NEWARK'S BRIEF IN OPPOSITION TO LEONIDA LIDMAN'S PETITION FOR WRIT OF CERTIORARI

STATEMENT OF CASE

The Court of Appeals for the Third Circuit and District Court accurately set forth the pertinent facts related to Petitioner's claim. [Pet. App. pp. 3-7, 25-26].

SUMMARY OF ARGUMENT

This case contemplates the limits of F.R.C.P. 60(b)(6) under which Petitioner seeks to reinstate her case. Under the rule Petitioner must show extraordinary circumstance for relief under the rule. Ackerman v. United States, 340 U.S. 193. However, Petitioner has failed in her claim to exhibit extraordinary circumstance. Petitioner alleges gross negligence on the part of her attorney for omission of evidence she thought would have changed the outcome of the case in her District Court action in 1984. However, the record shows that it was not gross negligence, nor an omission on the part of her attorney, but the operation of state law that denied her claim that she was entitled to the position under state regulation. As a result, verdict and judgment was rendered in favor of Respondent in 1987 by the District Court, however Petitioner fails to except the judgement of the District Court.

REASONS FOR DENYING THE WRIT

ARGUMENT

I. LEONIDA LIDMAN HAS NOT ARTICULATED A COMPELLING REASON TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT.

"Review on writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R.10. "A petition for a writ of certiorari will be granted only for compelling reasons." Id. Lidman has not presented any compelling reason for this Court to exercise discretionary jurisdiction over her appeal of the dismissal of her claim.

A. PETITIONER'S WRIT OF CERTIORARI SHOULD BE DENIED AS SHE HAS NOT SHOWN EXTRAORDINARY CIRCUMSTANCES FOR RELIEF REQUIRED BY RULE 60(b)(6)

Petitioner's claim bears no facts of extraordinary circumstances to reopen Petitioner's case. Ackerman v. United States, 340 U.S. 193, 71 S. Ct. 209, 95 L.Ed. 207 (1950). "Relief under Rule 60(b)(6) may only be granted under extraordinary circumstances where, without such relief, an extreme and unexpected hardship would occur." Sawka v. Healtheast Inc., 989 F.2d 138, 140 (3rd Cir. 1993). "[T]his requires that the petitioner make a more compelling showing of inequity or hardship than normally would be required to reopen a case under subsection (1) through (5)." Landano v. Rafferty 897 F. 2d 661, (3rd Cir. 1990). Specifically, "Rule

60(b)(6) is not intended as a means by which the time limitation of 60(b)(1-3) may be circumvented." In short, "Rule 60(b)(6) is available only in cases evidencing extraordinary circumstances, Ackerman v. United States at 202, and only when relief sought is based upon " any other reason" than a reason which would warrant relief under 60 (b)(1-5)." Strardley v. Cortez, 528 F. 2d 488, 494 (3rd Cir. 1975). Moreover, a application under Rule 60(b)(6) is subject to the reasonableness of the time period in which the motion is filed and must be viewed in light of the circumstances.

Petitioner claims she should be entitled to relief since allegedly her attorney's committed gross negligence for failing to include in the Amended Complaint in the District Court action in 1984, a Certification issued by the Civil Service for the permanent appointment of the position of Program Coordinator of the Office of Aging, for which at that time she qualified for. Additionally, she asserts that the certification lack of consideration or non-consideration in the Amended Complaint would have swayed the jury to believe that Respondent discriminated against her under 42 U.S.C. 1983 in denying Petitioner the position of Program Coordinator of the Office of Aging.

However, a simple omission or negligence by Petitioners attorney does not rise to the level of extraordinary circumstance, especially 12 years after the fact. Link v. Wabash Railroad Co., 370 U.S. 626, 633-634 (1962). Moreover, her failure to be appointed was a matter of state law, which gave Respondent discretion to appoint or

disappoint. Specifically, N.J.S.A. 11:10-6[1] conferred Respondent with the discretion of appointing an eligible candidate to the position or returning the certification incomplete to Civil Service if there were less than three (3) eligible candidates. At the time the position was under consideration there was not three (3) eligible candidates and Respondent in the exercise of its discretion, returned the Certification incomplete. As a consequence, Petitioner and for that matter any other employee that applied for the position was not appointed. The actions taken by Respondent regarding the disappointments were in no way discriminatory under 42 USC 1983 as she alleges but more or less in harmony with state law. In fact, the Certification from the Civil Service Petitioner claims was omitted in her Amended complaint as it was brought out at trial in the District Court in 1984 during direct examination of Petitioner. [Pet. App. pp 5.].

Even assuming arguendo, that Petitioner's allegations are true, it still would not have changed the outcome of the case since Respondent acted within its authority under N.J.S.A. 11:10-6 in denying Petitioner the position as noted by the District Courts in their opinion from the original trial in 1987. The jury also agreed by returning a verdict of "no cause" in May, 1987. [Pet. App. pp 26-27.] Thus, to reopen the case as Petitioners seeks to accomplish would neither further justice nor be justifiable. In fact, it would now prejudice Respondent as the individuals named, as Defendants are no longer employed at the Housing Authority. In light of the above, Petitioner's allegations of gross negligence on the

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[1] This statute is now found at N.J.S.A. 11A: 4-8.

part of her attorney may, if at all, only amount to simple error that would not have impacted upon the outcome of the case.

Petitioner's case simply does not rise to the level of established precedent showing extraordinary circumstances. Klapprott v. United States, 335 U.S. 601, 613-614 (1949) (holding incarceration and ill-health beyond petitioner's control effectively hobbled petitioner from timely responding warranting after four years vacation of default judgement), Boughner v. Secertary of Health and Welfare, 572 F. 2d 976, 3rd Cir. 1978, (holding gross negligence of petitioner's attorney for failure to file 52 responsive pleadings of clients and allowing claims to go unopposed, resulting in dismissals, warranted reopening the case), Landano v. Rafferty, 897 F. 2d 661, 3rd Cir. 1990, (holding prosecutorial misconduct may have contributed to false imprisonment warranting after thirteen years reopening the case). In view of the extraordinary length of the time (12 yrs.) that has elapsed from which the Petitioner has sought to reopen the within case and absent any exceptional circumstance, the District Court and Third Circuit Court of Appeals properly denied Petitioner's Motion to Reinstate.

CONCLUSION

In light of the foregoing reasons Plaintiff 's request for Certiorari should be denied and the judgement of the Third Circuit Court of Appeals affirmed.

Respectfully submitted,

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